

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

WILLIE CLARENCE WEST, JR.,)
Plaintiff,)
v.) CIVIL ACTION NO. 5:11-CV-40 (MTT)
HUBERT MCRAE,)
Defendant.)

)

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge Charles H. Weigle. (Doc. 16). The Magistrate Judge recommends granting the Defendant's Motion to Dismiss and dismissing the Plaintiff's action with prejudice. However, in the Recommendation, there is no discussion of the substantive issues raised by the Defendant as grounds for dismissal. Instead, the Magistrate Judge relies upon Federal Rule of Civil Procedure 41(b) in his dismissal of the Plaintiff's case. Rule 41(b) allows a court to dismiss an action if the plaintiff fails to prosecute his action or fails to comply with a court order. The Court agrees with the Magistrate Judge that the Plaintiff's case is ripe for dismissal pursuant to Rule 41(b). The Plaintiff has been given every opportunity to pursue his claims, and was, on numerous occasions, ordered to show cause for his failure to respond to various orders of the Court or face dismissal pursuant to Rule 41(b). To date, no response or other pleading has been filed by the Plaintiff.

Although the Court agrees that the Plaintiff's case should be dismissed, the Court concludes that the Plaintiff's case should be dismissed **without** prejudice, rather than

with prejudice, as the Magistrate Judge recommended. "A dismissal with prejudice, whether on motion or sua sponte, is an extreme sanction that may be properly imposed only when ... the district court specifically finds that lesser sanctions would not suffice."

Betty K Agencies, LTD. v. M/V Monada, 432 F.3d 1333, 1337-38 (11th Cir. 2005) (internal quotation marks and citation omitted). Here, the Court is not convinced that the lesser sanction of dismissal without prejudice would not suffice. Accordingly, to the extent the Recommendation recommends dismissing the Plaintiff's case, the Recommendation is adopted and made the order of this Court. However, the dismissal will be **without prejudice**. Because the Court did not rely upon the Defendant's Motion to Dismiss in reaching its decision, the Motion to Dismiss is **denied as moot**.

SO ORDERED, this 4th day of August, 2011.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT